



## Final Regulation Agency Background Document

<b>Agency name</b>	Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 35-190
<b>Regulation title</b>	Regulations Governing Juvenile Work and Educational Release Programs (adding 6 VAC 35-190-10 through 6 VAC 35-190-100). This new regulation, mandated by Chapter 648 of the 2005 Acts of the General Assembly, sets forth the rules and criteria by which the Department of Juvenile Justice ("DJJ" or the "department") may operate work release programs whereby committed juveniles (i) may be employed by private individuals or entities or by state or local agencies at places of business; (ii) may attend educational or other related community activity programs outside of a juvenile facility; or (iii) may attend rehabilitative or other related community activity programs outside of a juvenile facility. Chapter 648 requires the Department to provide juveniles committed to the Department with opportunities to work and participate in career training or technical education programs as operated by the Department or by the Department of Correctional Education (DCE) and sets forth requirements to be included in the regulation, including eligibility for work release, compensation, custody, and penalties for violating the terms of work release.
<b>Action title</b>	Final Regulations Governing Juvenile Work and Educational Release Programs.
<b>Date this document prepared</b>	June 13, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

Chapter 648 of the 2005 Acts of the General Assembly required the State Board of Juvenile Justice to promulgate emergency regulations for the purpose of implementing the Pilot Work/Educational Release Program. The emergency regulation became effective on December 14, 2005.

In accordance with criteria established pursuant to §§ 66-25.1:1 through 66-25.1:4 of the Code of Virginia, the proposed regulations provide the framework for assessing each juvenile committed to DJJ for participation in a work release program, apprenticeship program, job enterprise program, or any other work experience opportunity located at or through the juvenile correctional center (“JCC”) where the juvenile is placed. As required by the Virginia Code, the juveniles participating in these offsite work and educational opportunities will be those who have made significant rehabilitative progress and have demonstrated their capacity to meet the challenges presented by these opportunities.

A juvenile who is proficient in a trade or occupation and who meets the work release criteria established by the director may be approved for employment outside of the JCC. A juvenile who the director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a JCC may attend such programs outside of the juvenile correctional facility.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The Board of Juvenile Justice adopted the final regulation, “Regulations Governing Juvenile Work and Educational Release Programs,” at its June 13, 2007, meeting.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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### 2005 Legislation Required Regulatory Action

Chapter 648 of the 2005 Acts of the General Assembly requires the Department to provide juveniles committed to the Department with opportunities to work and participate in career training or technical education programs. In implementing such programs, Chapter 648 of the 2005 Acts of the General Assembly requires the State Board of Juvenile Justice to develop regulations setting forth the rules and criteria by which DJJ may operate work release programs whereby committed juveniles may be employed by private individuals, corporations, or state agencies at places of business. The new regulation will also allow a committed juvenile to attend

educational or other related community activity programs outside of a juvenile correctional facility. Chapter 648 sets forth the requirements to be included in the regulations, including eligibility for work release, compensation, custody, and penalties for violating the terms of work release.

**2005 Legislation Required Emergency Regulations**

Chapter 648 of the 2005 Acts of the General Assembly further required the State Board of Juvenile Justice to promulgate emergency regulations for the purpose of implementing a Pilot Work/Educational Release Program. The emergency regulation became effective on December 14, 2005.

Section 66-10 of the Code of Virginia authorizes the Board of Juvenile Justice to promulgate such regulations as may be necessary to carry out the provisions of Title 66 and other laws of the Commonwealth administered by the director or the Department.

Section 66-10 of the Code of Virginia authorizes the department to provide juveniles committed to the department with opportunities to work and participate in career training or technical education programs. In implementing such programs, § 66-25.3:3 authorizes the State Board of Juvenile Justice to develop regulations setting forth the rules and criteria by which the department may operate work release programs whereby committed juveniles may be employed by private individuals, corporations, or state agencies at places of business.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The goal of the career training and technical education programs authorized by § 66-25.1:2 of the Code of Virginia is “to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs.”

The goals of the work release provisions of § 66-25.1:3 of the Code of Virginia are (i) to allow a juvenile who is proficient in any trade or occupation and who meets the work release criteria established by the director to be approved for employment by private individuals, corporations, or state agencies at places of business; and (ii) to permit a juvenile who meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a juvenile correctional center to attend such programs outside of the juvenile correctional facility.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The regulation (i) provides for an assessment of juvenile’s suitability to participate in work release or similar programs, based on the enabling statute; (ii) specifies criteria that juveniles must meet to be considered for participation in a work release, educational release, job enterprise, or other rehabilitative program in the community; (iii) requires written procedures to ensure accountability of participating juveniles; (iv) specifies conditions juveniles must meet to participate in a work release program; (v) specifies the conditions that must be met by an employing, supervising, or training entity; (vi) establishes conditions for juvenile participation in educational or rehabilitative release programs; (vii) requires written procedures, consistent with the Code of Virginia, governing juvenile furloughs; (viii) requires that a juvenile’s earnings shall be disbursed in accordance with § 66-25.1:3 of the Code of Virginia; and (ix) requires written procedures for removing a juvenile from a program.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulations will strengthen the Department’s ability to help develop a committed juvenile’s educational and career skills needed to successfully transition back into the community from which the juvenile was committed. Providing the opportunity to participate in educational and career training programs and jobs to juveniles between the ages of 16 and 21 will increase that juvenile’s potential for obtaining meaningful employment upon release from the juvenile correctional center. Ensuring that a juvenile is participating in educational and career programs during his commitment will increase the likelihood of a successful transition back into the community and lessen the possibility of recidivism. Reducing recidivism and providing juveniles with better possibilities for career development will benefit all Virginia families.

The Department may develop appropriate interagency linkages with state and local agencies, public and private institutions of education and of higher education, labor and industry councils, the business community, rehabilitative services providers, and employment and guidance services. The regulatory action poses no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

The Department has made no substantive changes to the text of the proposed regulation since its publication. All other changes are detailed below in “All changes made in this regulatory action.”

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

**Commenters:** The Department received comments from the Virginia Coalition for Juvenile Justice, c/o Juvenile Law and Policy Clinic, T.C. Williams School of Law, University of Richmond (hereinafter referred to as VCJJ) and the JustChildren Program, Legal Aid Justice Center, Charlottesville, VA 22903 (hereinafter referred to as JustChildren). Those comments are summarized below.

**Summary of Comments:**

Commenter	Comment
VCJJ	<p>The Virginia Coalition for Juvenile Justice commends the Department of Juvenile Justice for their efforts on these work release regulations which will provide children with important work experience opportunities to equip them for employment after release.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Agency response:</b></p> <p>The Department thanks the commenting party for its positive feedback.</p> <p>No additional response is required.</p> </div>
VCJJ	<p>In order to maximize learning opportunities, the program must be structured such that strategies will be considered separately according to each child’s needs and will provide definite parameters for participation. Therefore we suggest that the three components of the regulations - education, rehabilitation, and work release - be addressed separately with different eligibility criteria.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Agency response:</b></p> <p>The Department will recommend incorporating some of the proposed edits listed above.</p> <p>The Department recommends incorporating the commenting party’s request for separate definitions for Educational Release Program, Rehabilitative Release Program, and Work Release Program for clarification of the opportunities available under the governing statute. As such, the regulation appropriately addresses the broad spectrum of career training and technical education opportunities covered by the statute. More specific criteria, as suggested by the commenting party, in the proposed regulation would be more appropriately addressed in agency procedures.</p> </div>
VCJJ	<p>To ensure flexibility to use other work and training opportunities, separate definitions of the following activities permitted by express language in the statute should be added: career training or technical educational programs; mentoring and apprenticeship programs; guidance services to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals; and work training.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Agency response:</b></p> </div>

	<p>In light of the comment, the Department reviewed the most logical, technical, and legal definitions of the identified terms. The terms, as used, are subject to their plain meaning governing the work, rehabilitative, and educational programs as defined in the applicable procedures. The definitions for each of the terms listed above are inherent in their use in the relevant procedures. Furthermore, since the availability of these work and training opportunities is expressly provided in the statute, a regulatory definition would be unnecessary.</p>
<p>VCJJ</p>	<p>We also encourage the Department to also allow youth under 16 to participate in educational and rehabilitative programs. Providing such resources to children under 16 will better allow them to acquire skills and develop habits for successful employment. Therefore the minimum age limit of 16 should be reexamined for the employment aspects of work release.</p> <div data-bbox="349 577 1565 758" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends removal of any age limitation from the proposed regulation. Determination of the minimum age criteria, for each program as necessitated by all relevant factors, is more appropriately addressed in the Department’s procedures.</p> </div>
<p>VCJJ</p>	<p>VCJJ supports the requirement that pay and other working conditions be comparable to similar work in the locality. However to avoid misunderstandings, a written agreement should be drafted between parties setting out the job/training description, rate of pay (if applicable) and any other terms of employment. DJJ should also notify employers that DJJ youth are protected by Virginia’s labor laws.</p> <div data-bbox="349 917 1565 1123" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department will recommend incorporating into 6 VAC 35-190-70 clauses regarding the requirement to follow applicable state and federal laws and how the resident will be compensated.</p> <p>However, the additional specific criteria requested are more appropriately addressed in agency procedures.</p> </div>
<p>VCJJ</p>	<p>Procedures concerning the removal of a participant from the work related programs should be explicitly set forth in the regulations. The procedures should state whether removal has any effect on a person’s disciplinary record or institutional infractions. Each recipient should receive a copy of the written procedures and should also have them explained again at the time removal begins. In addition to the procedures listed in the proposed regulations, there should be written notice to the participant about the basis for removal, an opportunity to present information at the informal hearing to refute the allegations, and an opportunity to examine the person who initiated the removal.</p> <div data-bbox="349 1346 1565 1472" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The specific criteria requested are more appropriately addressed in agency procedures.</p> </div>
<p>VCJJ</p>	<p>Include in the regulations that the enabling statute gives the Director authority temporarily to place a committed juvenile in a local detention facility or home for a work release opportunity.</p> <p>This authority provides added flexibility to provide adequate experiences to help youth reintegrate into the community.</p> <div data-bbox="349 1656 1565 1898" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>Upon review of the proposed regulation and its governing statute in their entirety, the Department believes that the proposed edit includes unnecessary duplicative language. The governing statutes include both correctional center and postdispositional placement alternatives, which are incorporated in the definition of state and local agencies.</p> <p>Additionally, the regulation and § 66-25.1:4 of the Code of Virginia allows for furlough opportunities to</p> </div>

	<p>further assist with reintegration.</p>
<p>JustChildren</p>	<p>Both the enabling statutes and the draft rules address opportunities for the Department to plan and coordinate institutional services so that when a child is released s/he is prepared to work and has the necessary mental health supports to be successful. While the draft regulations present good first steps, we believe the drafts are unduly narrow in focus.</p> <p>We urge the Board to take advantage of the full authority in the enabling statutes. Being able to assist youths according to their abilities and needs is critical to success. There is no reason for the Board to choose narrower approaches than the legislation allows and such a decision could violate the Board’s authority.</p> <p>The proposed work release regulations fail to take advantage of the broad scope of career training and technical education opportunities covered by the statute.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends incorporating separate definitions for Educational Release Program and Rehabilitative Release Program for clarification of the opportunities available under the governing statute. As such, the regulation appropriately addresses the broad spectrum of career training and technical education opportunities covered by the statute.</p> <p>Furthermore, the Department believes that the proposed regulation is consistent with the authority provided in §§ 66-25.1:2 and 66-25.1:3 of the Code of Virginia, does not exceed, and is subject to the statutory mandates contained therein. More detailed criteria delineating the programs, and the opportunities presented therein, are more appropriately addressed in agency procedures. Accordingly, the Department does not believe the Board is violating its rulemaking authority as provided in § 66-10 of the Code of Virginia.</p> </div>
<p>JustChildren</p>	<p>6 VAC 35-190-10. Definitions.</p> <p>Some of the programs permitted by the Chapter 648 do not appear in the definitions, and, thus, the regulations fail to extend to the full scope of Chapter 648. Structuring a program sufficiently flexible to maximize learning opportunities will require separate consideration of each strategy according to the child’s needs. Thus, we suggest that the definitions separately address each of the options.</p> <p>We suggest the following changes:</p> <p><b>“Educational release program”</b> or <del>“rehabilitative release program”</del> means a program whereby wards of the Department of Juvenile Justice who meet the minimum eligibility criteria <del>for a work release program</del>, and whom the Director determines may receive substantial benefit from the activity, may be approved to participate in educational or other community activity programs not available within a juvenile correctional center.</p> <p><b>“Rehabilitative release program”</b> means a program whereby wards of the Department of Juvenile Justice who meet the minimum eligibility criteria <del>for a work release program</del>, and whom the Director determines may receive substantial benefit from the activity, may be approved to participate in <u>educational-rehabilitative release activities</u> or other community activity programs not available within a juvenile correctional center.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends incorporating changes substantially similar to those proposed changes stated above.</p> </div>
<p>JustChildren</p>	<p>The definition of “work release program” covers too many disparate opportunities. The statute calls for “a broad range of career opportunities,” Va. Code §66-25.1:2B, which are not currently reflected in the definitions. To conform the scope of opportunities to the statute, we first suggest an alternative definite of Work Release focused on employment. Further, to conform to the statute and to protect juveniles from potentially</p>

	<p>poor working conditions in private agriculture, we suggest that cultivation be limited to public property.</p> <p>Thus, we suggest the following definition:</p> <p><b>“Work release program”</b> means a program whereby wards of the Department of Juvenile Justice who meet specified eligibility criteria may be approved for employment <u>for wages</u> by private individuals, corporations, or state <del>or local agencies at places of business</del>, as provided for in § 66-25.1:3 of the Code of Virginia. <u>Wards may be employed by state</u> or by local governments <del>agencies at places of business</del> or to improve, repair, work on, or cultivate public <del>or private</del> property or buildings as provided for in § 66-25.1:2B of the Code of Virginia.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends incorporating the changes requesting the addition of the phrases: (1) “for wages” and (2) “or local.”</p> <p>The Department further recommends deleting the last line of the proposed definition of work release program as being duplicative of existing code language and will add the phrase: “...as provided in §§ 66.25.1:2 and 66.25.1:3” to the first sentence. This change will result in the language in the regulation being consistent with that in the governing statute and existing code sections.</p> <p>The Department believes that the proposed changes that were not incorporated into the proposed regulation limit the Department’s ability to place residents in appropriate places of employment with private employers willing to participate in these programs. Such places of employment and potential employers were detailed in the fiscal impact statement and previous supporting documents provided to and available on the Virginia Regulatory Town Hall. The availability of such diverse employment opportunities and public-private partnerships is integral to the successful implementation of the program and is consistent with the governing statutory language.</p> <p>Additionally, the Department disagrees with the statement that the residents will be exposed to “potentially poor working conditions.” The governing statute and regulations remain subject to the federal and state laws regarding employment and work conditions. The program is highly structured, and the employment opportunities are strictly monitored by the program staff as detailed in the Department’s procedures.</p> </div>
JustChildren	<p>To ensure flexibility to use the other work and training opportunities, we suggest adding separate definitions of the following activities permitted by express language in the statute:</p> <ul style="list-style-type: none"> <li>• Career training or technical education programs, Va. Code §66-25.1:2A;</li> <li>• Mentoring and apprenticeship programs, Va. Code §66-25.1:2B;</li> <li>• Guidance services to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals, Va. Code §66-25.1:2B; and</li> <li>• Work training, Va. Code §66-25.1:2B.</li> </ul> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>In light of the comment, the Department reviewed the most logical, technical, and legal definitions of the identified terms. The terms, as used, are subject to their plain meaning governing the work, rehabilitative, and educational programs as defined in the applicable procedures. The definitions for each of the terms listed above are inherent in their use in the relevant procedures. Furthermore, since the availability of these work and training opportunities is expressly provided in the statute, a regulatory definition would be unnecessary.</p> </div>
JustChildren	6 VAC 35-190-20. Policy and Purpose.



	<p>The purpose statement in Subsection B can better reflect the wide latitude in the statutes as follows:</p> <p><b>Subsection B.</b> The purpose of the career-related programs, training, and services governed by this regulation is to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs. <del>Work training opportunities may include but need not be limited to, business, industrial, agricultural, highway maintenance and construction, and other arrangements whereby juveniles may be employed to improve, repair, work on, or cultivate public or private property or buildings.</del></p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends proceeding with edits substantially similar to those above, which primarily remove duplicative language.</p> </div>
<p>JustChildren</p>	<p>6 VAC 35-190-30. Assessing a Ward’s Suitability for Program Participation.</p> <p>This section needs broader language to conform to the wider range of programs included in the statutes. Thus, we suggest striking the language which appears to narrow the options:</p> <p><b>Subsection A.</b> Department case management procedures shall provide a process for assessing the suitability of individual wards <del>for work release, educational release, and other</del> programs authorized by <u>Va. Code §§ 66-25.1:2 and 1:3</u> and this regulation, subject to eligibility criteria established by 6 VAC 35-190-40.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends proceeding with edits substantially similar to those proposed, which primarily remove duplicative language.</p> </div>
<p>JustChildren</p>	<p>6 VAC 35-190-30. Assessing a Ward’s Suitability for Program Participation</p> <p>Earning the status to participate can be an incentive for growth and positive behaviors; thus, wards should receive information early in their commitment about the specifics for eligibility. If the criteria are not fully disclosed, it will appear that decisions are arbitrary. The following processes in the assessment need to be publicly disclosed in the regulations and in written notice to the youth:</p> <p><b>Subpart A,</b> the “process for assessing the suitability of individual wards for work release, educational release, and other programs. . . “</p> <p><b>Subpart B –</b></p> <p><b>B1.</b> Describe what factors in “offense history” and “behavior during commitment” will be determinative;</p> <p><b>B2.</b> Describe the “objective risk assessment” of the “likelihood to reoffend;” and</p> <p><b>B3.</b> Describe the determinative factors in assessing the “juvenile’s suitability” including “the ward’s proficiency in a trade or occupation related to a work release program.”</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The proposed regulation presents a guideline for implementation of the program. The proposed edits are more appropriately addressed in Department procedures.</p> <p>Additionally, the proposed edits appear to imply that participation in the work/educational release program is compulsory if the eligibility criteria are met. Given the size of the program and the possibility that the number of eligible residents will exceed the number of available spots, such mandated participation when implemented</p> </div>

	<p>is not feasible.</p>
<p>JustChildren</p>	<p>6 VAC 35-190-40. Eligibility Criteria.</p> <p>We urge the Department to set out separately the criteria for the potential programs such as educational release, rehabilitation release, apprenticeship, etc., permissible under the statute. This provides clearer parameters for participation.</p> <p>This change will allow youth younger than 16 to participate at least in education and rehabilitation release. Educators emphasize that children should begin at an early age to acquire skills and habits to equip them for successful employment. Allowing children less than 16 to have education and rehabilitation release can lay the foundation for work.</p> <p>This section also needs clearly enunciated eligibility criteria to promote objectivity as well as the perception of fairness. More specificity in the following can promote those goals:</p> <p><b>Subpart A</b> – “case management procedures.” Describe what aspects of the case management procedures apply here and which members of the case management team will participate in the decision.</p> <p><b>Subpart B3.</b> Do the wards know the definitions of “moderate” and “major” institutional offenses?</p> <p><b>Subpart B7.</b> Describe what “requiring the highest level of supervision” under classification means.</p> <p><b>Subpart B8.</b> Describe the “objective risk assessment” and the determination of “a high risk of re-offending.”</p> <p>It is important to ensure that none of the eligibility criteria exclude youth on the basis of his/her disability. For example, criteria cannot exclude juveniles who have behavioral disability. Such a blanket exclusion would violate the Americans with Disabilities Act and Section 504. DJJ has a legal obligation to evaluate situations on a case-by-case basis and to seek reasonable accommodations to include a youth despite his or her disability.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department believes that the specific criteria, including the definitions, requested are more appropriately addressed in agency procedures. This includes the criteria for the minimum age of participants. The Department recommends removal of any age limitation from the proposed regulation. Determination of the minimum age criteria, for each program as necessitated by all relevant factors, is more appropriately addressed in the Department’s procedures.</p> <p>In response to the statements included in the last paragraph of the comment, we acknowledge that the Department is subject to all applicable laws that prohibit discrimination on the basis of disability. The proposed regulation as drafted does not contain language subject to that portion of the comment.</p> </div>
<p>JustChildren</p>	<p>6 VAC 35-190-40. Eligibility Criteria.</p> <p>We encourage DJJ to reexamine 16 as the minimum age for the employment aspects of work release, since it is not a statutory requirement. <b>Subsection A.9.</b> Appropriately acknowledges the need to develop opportunities to integrate career training, technical education and work release with the compulsory education requirements for youth less than 18. Since many of DJJ’s youth are less than 18, connecting them to community programs which carry work training and education modules for which students can receive academic credits will advance the purposes of the statute. These same requirements can likewise be used to benefit youth younger than 16 who can receive academic credits for vocation-oriented programs combining work and education.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> </div>

	<p>The Department recommends removal of any age limitation from the proposed regulation. Determination of the minimum age criteria, for each program as necessitated by all relevant factors, is more appropriately addressed in the Department’s procedures.</p>
JustChildren	<p>6 VAC 35-190-40. Eligibility Criteria.</p> <p>We suggest striking narrowing language to conform to the statute.</p> <p><b>Subpart A.</b> In accordance with Department case management procedures, wards may be approved to participate in <del>a work release, educational release, or other rehabilitative</del> <u>authorized programs</u> in the community when they meet the following eligibility criteria.</p> <div data-bbox="349 577 1560 724" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department recommends proceeding with edits substantially similar to those requested above, which remove duplicative language.</p> </div>
JustChildren	<p>6 VAC 35-190-40. Eligibility Criteria.</p> <p>This section also needs clearly enunciated eligibility criteria to promote objectivity as well as the perception of fairness. More specificity in the following can promote those goals:</p> <p><b>Subpart A</b> – “case management procedures.” Describe what aspects of the case management procedures apply here and which members of the case management team will participate in the decision.</p> <p><b>Subpart B3.</b> Do the wards know the definitions of “moderate” and “major” institutional offenses?</p> <p><b>Subpart B7.</b> Describe what “requiring the highest level of supervision” under classification means.</p> <p><b>Subpart B8.</b> Describe the “objective risk assessment” and the determination of “a high risk of re-offending.”</p> <div data-bbox="349 1159 1560 1306" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department believes the specific criteria, including definitions, requested are more appropriately addressed in agency procedures.</p> </div>
JustChildren	<p>6 VAC 35-190-40. Eligibility Criteria.</p> <p>It is important to ensure that none of the eligibility criteria exclude youth on the basis of his/her disability. For example, criteria cannot exclude juveniles who have behavioral disability. Such a blanket exclusion would violate the Americans with Disabilities Act and Section 504. DJJ has a legal obligation to evaluate situations on a case-by-case basis and to seek reasonable accommodations to include a youth despite his or her disability.</p> <div data-bbox="349 1528 1560 1675" style="border: 1px solid black; padding: 5px;"> <p><b>Agency response:</b></p> <p>The Department acknowledges that it is subject to all applicable laws that prohibit discrimination on the basis of disability. The proposed regulation as drafted does not contain language subject to the present comment.</p> </div>
JustChildren	<p>6 VAC 35-190-50. Written Procedures for Accountability of Participants.</p> <p><b>Subsection 5.</b> We applaud the requirement for clarity in Subsection 5 concerning written procedures by health experts with regard to medications.</p> <p>JustChildren supports the requirements to require pay and other working conditions comparable to similar work in the locality. We encourage DJJ to avoid blanket prohibitions against self-medication which may have the</p>

	<p>Effect of limiting participation by youth with certain disabilities. Under the Americans with Disabilities Act and Section 504, decisions on how to provide reasonable accommodations for taking medications have to be addressed on a case-by-case basis.</p> <p><b>Agency response:</b></p> <p>We thank the commenting party for its positive feedback. We further acknowledge that the Department is subject to all applicable laws that prohibit discrimination on the basis of disability and believes that the proposed regulation as drafted does not contain language subject to the present comment.</p>
JustChildren	<p>6 VAC 35-190-70. Conditions for Employing, Supervising, or Training Entity.</p> <p>We encourage more clarity in this section so that employers, the youth in work release and DJJ will have a common understanding of the parameters of the work, training or other career opportunities.</p> <p>To avoid misunderstandings between the juveniles, the employer or supervisor, and the DJJ facility, we suggest a written agreement between the parties which would set out the job or training description; the rate of pay if applicable; and other terms of employment, such as hours and work rules.</p> <p>We urge DJJ to notify employers in writing that DJJ youth are protected by Virginia’s child labor laws and that employment must comply with maximum hours and protections from hazardous work conditions. See e.g. Va. Code §40.1-100.</p> <p>DJJ’s regulations governing juvenile industries work programs (6 VAC 35-140-800) contain much appropriate language which could be adopted here.</p> <p><b>Agency response:</b></p> <p>The Department recommends proceeding with some edits substantially similar to those requested above. These edits will address (1) requirement to comply with federal and state employment laws; (2) resident selection and supervision; and (3) how the resident will be compensated.</p> <p>However, the additional specific criteria requested are more appropriately addressed in agency procedures.</p>
JustChildren	<p>6 VAC 35-190-110. Removing Participants from Program.</p> <p>DJJ needs written procedures concerning removing a participant from the work-related programs. However, these procedures should be explicitly set forth in the regulations. The procedures should state whether removal has any effect on a person’s disciplinary record or institutional infractions. Each recipient should receive a copy of the written procedures and should also have them explained again at the time removal begins.</p> <p>In addition to the procedures listed in the proposed regulations, there should be written notice to the participant about the basis for removal, an opportunity to present information at the informal hearing to refute the allegations, and an opportunity to examine the person who initiated the removal.</p> <p><b>Agency response:</b></p> <p>The Department believes the specific criteria requested are more appropriately addressed in agency procedures.</p>
JustChildren	<p><b>Add:</b> Temporary Placement in Local Detention Facility or Home.</p> <p>The enabling statute gives the Director authority temporarily to place a committed juvenile in a local detention facility or home for a work-release opportunity. This authority provides added flexibility to provide adequate experiences to help youth reintegrate into the community. We urge DJJ to include this topic in</p>

	<p>the regulations.</p> <p><b>Agency response:</b></p> <p>The governing statutes include both correctional center and postdispositional placement alternatives, which are incorporated in the definition of state and local agencies. Additionally, the regulation and § 66-25.1:4 of the Code of Virginia allow for furlough opportunities. Thus, the Department believes that the proposed edit includes unnecessary duplicative language.</p>
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**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
10	10	Definition of "Department"	Added definition of "Department" for clarity.
N/A	N/A	Department	Deleted duplicative language "of Juvenile Justice" after department consistent with the definition.
10	10	Definition of "Educational release program"	Deleted "rehabilitative release program" for consistency with separate definitions of educational, rehabilitative, and work release programs. Separating the definitions does not change the meanings incorporated in the regulation but clarifies the variant nature of the three programmatic options.
N/A	N/A	Ward(s)	Changed to "resident" throughout the document for consistency
N/A	N/A	Juvenile(s)	Changed to "resident" throughout the document for consistency.
10	10	Definition of "Educational release program"	-Deleted "for a work release program" for consistency with separate definitions of educational, rehabilitative, and work release programs. Separating the definitions does not change the meanings incorporated in the regulation but clarifies the variant nature of the three programmatic options. -Changed "juvenile correctional center" to "facility" for consistency with the definitions provided.
10	10	Definition of "Facility"	Added definition of "facility" for consistency with the scope of the governing Code and use within the document.
10	10	Definition of "Furlough"	Changed term "secure custody" to "facility" for consistency with definitions used.
10	10	Definition of "Rehabilitative release program"	Added definition of "rehabilitative release program" for consistency with separate

			definitions of educational, rehabilitative, and work release programs. Separating the definitions does not change the meanings incorporated in the regulation but clarifies the variant nature of the three programmatic options.
10	10	Definition of "Resident"	Added definition of "resident(s)" as used throughout the regulation for proper identification of the scope to the juvenile/adult population consistent with the governing Code.
10	10	Definition of "Work release program"	-Added "for wages" and "or local" for clarification of work opportunities afforded under the statute. -Deleted "§ 66-25.1-3" as duplicative. -Added "§§ 66-25.1:2 and 66-25.1:3" and deleted "or by local agencies at places of business or to improve, repair, work on, or cultivate public or private property or buildings as provided for in § 66-25.1:2 of the Code of Virginia" to ensure the regulation and opportunities available thereunder coincide with those provided for in the Code of Virginia.
20	20	Policy and purpose (A)	Moved "the" and changed "their" to "the residents" as technical changes.
20	20	Policy and purpose (B)	Deleted "Work training opportunities may include...or buildings" as duplicative language.
30	30	Assessing suitability	-Deleted "work release, educational release, and other" as duplicative language. - Changed "this regulation" to "§§ 65-25.1:2 and 1:3 of the Code of Virginia for clarity.
30	30	Assessing suitability	Added "and" to clarify that all three components will be used in the assessment.
30	30	Assessing suitability	Added "or educational."
40	40	Eligibility criteria (A)	Changed "a work release, educational release, or other rehabilitative program" to "authorized programs" to reduce excess verbiage.
40	40	Eligibility criteria (B)(1)	*Deleted age requirement for regulation to be consistent with the governing statute. Specific criteria for each program will be addressed in department procedures. *Numbering changed thereafter as necessary for appropriate format.
40	40	Eligibility criteria (B)(1) and (7)	-Added "of the department" after "direct care" for clarity as the term is not further defined in the regulation. -Deleted "s" from "indicates" for subject verb agreement.
70	70	Conditions for employing	This subsection was revised for the components to parallel those used by juvenile industries as provided for by 66.25.1 et seq. governed by department procedures.

			<p>-The portion of the proposed regulation requiring rates of pay and conditions of employment similar to others in the locality has been incorporated in the section requiring compliance with all applicable state and federal laws.</p> <p>- A section was added detailing information that should be contained in department procedure for hiring, supervising, terminating, and compensating residents. This naturally incorporates the portion of the proposed regulation regarding notification of behavior and affords a structured framework for greater detail in the procedures.</p> <p>- A section was added requiring the department to disburse earnings and make deductions from earnings consistent with the governing Code section.</p>

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The Department reviewed the statutory requirements, current practice, and best practices. The Department considered various alternatives for meeting the requirements of the legislation and attempted to develop the regulatory provisions that can be easily understood and implemented and which complement the current rehabilitative, educational, and work programs available through the Department (i.e.: juvenile work industries).

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action will have no impact on the authority and rights of parents, economic self-sufficiency, marital commitment, or family income.

The legislation mandating this regulation includes specific provisions that should support the institution of the family and enhance family stability. Moneys earned by a juvenile in a work release program shall first be used to meet the obligation of any administrative or judicial order to provide support; after fines and restitution are paid, any balance will be credited to the juvenile's account or sent to his family in an amount the juvenile chooses.

In addition, § 66-25.1:4 of the Code of Virginia authorized the director to extend the limits of confinement of any offender participating in a work release program to permit the offender a furlough for the purpose of visiting his home or family.